IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE

IN RE: WILLIAM L. BRANCH,

Petitioner,

v.

JAY CASSADY, IN HIS CAPACITY AS SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER,

Respondent.

DOCKET NUMBER WD77788

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: January 13, 2015

ORIGINAL PROCEEDING IN HABEAS CORPUS

JUDGES

Writ Division: Pfeiffer, P.J., and Mitchell, J., CONCURRING.
Martin, J., CONCURRING IN SEPARATE OPINION.

ATTORNEYS

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MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

IN RE: WILLIAM L. BRANCH,	)	
	)	
Petitioner,	)	
v.	)	
	)	**OPINION FILED:**
JAY CASSADY, IN HIS CAPACITY AS SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER,	)	**January 13, 2015**
	)	
Respondent.	)	

WD77788 **Original Proceeding in Habeas Corpus**

Before Writ Division Judges: Mark D. Pfeiffer, Presiding Judge, and Karen King Mitchell and Cynthia L. Martin, Judges

In 2000, William L. Branch ("Branch") pleaded guilty to murder in the first degree and robbery in the first degree in the Circuit Court of Cole County, Missouri ("circuit court"). Branch committed the offenses when he was seventeen years old. Pursuant to section 565.020, the circuit court sentenced Branch to a *mandatory* sentence of life without possibility of probation or parole (hereinafter, "LWOP") on the murder count; the circuit court sentenced Branch to a concurrent sentence of life imprisonment on the robbery count. Branch filed a *pro se* Rule 24.035 motion for post-conviction, which he dismissed before an amended motion was filed.

Branch filed his first petition for habeas corpus in the circuit court of the county in which he was then incarcerated. When that petition was denied, Branch petitioned this court for a Writ of Habeas Corpus, requesting vacation of his conviction for the offense of first-degree murder and his sentence of LWOP. Branch argued that section 565.020 is unconstitutional as applied to juvenile offenders and requested that his case be remanded for proceedings and a remedy consistent with *Miller v. Alabama/Jackson v. Hobbs*, 132 S.Ct. 2455 (2012).

WRIT GRANTED; REMANDED FOR RESENTENCING IN ACCORDANCE WITH OPINION.

Majority Opinion holds:

1. Missouri has elected to apply the *Linkletter-Stovall* standard to determine the retroactive application of new constitutional rules to cases pending on collateral review. Thus, in evaluating the retroactive effect of the new constitutional standard announced in *Miller/Jackson*, this court considers: (1) the purpose to be served by the new rule, (2) the extent of reliance by law enforcement on the old rule, and (3) the effect on the administration of justice of retroactive application of the new standards.

2. After considering these factors, we conclude that the United States Supreme Court's ruling in *Miller/Jackson* applies retroactively to cases on collateral review, including the present case, and is deemed to have been in effect at the time of Branch's sentencing. When the *Miller/Jackson* precedent is deemed to be the law in effect at the time of Branch's sentencing, *mandatory* sentencing of LWOP without conducting a "mitigating factors" analysis was not a sentence that was lawfully available to the sentencer. Accordingly, a sentence of LWOP is no longer a possible sentencing option, *unless and until* a "mitigating factors" hearing has taken place. The circuit court's imposition of a mandatory LWOP sentence was in excess of that authorized by law.

3. The imposition of a sentence beyond that permitted by the applicable statute or rule may be raised by way of a writ of habeas corpus even if a habeas petitioner failed to timely raise such a claim in a Rule 24.035 motion.

4. Branch is entitled to habeas relief and to be resentenced by the circuit court as to the murder in the first degree count on remand using the procedure described in *Miller/Jackson* as interpreted in *State v. Hart*, 404 S.W.3d 232, 239 (Mo. banc 2013). In all other respects, the judgment of the circuit court shall remain undisturbed.

Concurring Opinion holds:

The author would reach the same result as the majority but writes separately to explain that even under the *Teague v. Lane*, 489 U.S. 288 (1989), retroactivity analysis employed in federal courts, the new rule announced in *Miller/Jackson* is a substantive rule, which must be retroactively applied.

The *Teague* analysis requires two steps. First, it must be determined if a "new rule" is substantive or procedural. Second, and only if the rule is determined to be procedural, it must be determined whether the new procedural rule is a watershed rule.

Miller/Jackson announced a new rule that mandatory LWOP for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on "cruel and unusual punishment." *Miller/Jackson* regulates ***what*** must be considered before a sentence of LWOP can be imposed on a person under the age of 18. *Miller/Jackson* identified numerous "factors" not present in the state statutes it was considering that *must* be considered before LWOP can be imposed as a sentence on a juvenile. Unless the evaluation of those factors militates toward the imposition of LWOP, that sentence cannot be imposed on a juvenile. The *Miller/Jackson*

"factors" are essential precursors to the imposition of an aggravated sentence of LWOP, rendering them seemingly indistinguishable from "aggravating factors" set forth in a state statute that must be found before the death penalty can be imposed. Thus, the "factors" identified in *Miller/Jackson* are, at a minimum, *substantive* matters that must be *considered* by the sentencing authority before a heightened sentence can be imposed, and may well be "effectively elements" that must be *found* to exist. Because the "factors" identified in *Miller/Jackson* constitute a condition on the imposition of a particular sentence on a particular class of persons that has been created by the United States Supreme Court, the "factors" constitute a new substantive rule.

Majority Opinion by: Mark D. Pfeiffer, Presiding Judge January 13, 2015
Concurring Opinion by: Cynthia L. Martin, Judge

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